

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS MAR 29 1991  
HOUSTON DIVISION

Jesse E. Clark, Clerk

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RALPH L. LOWE , DIXIE OIL  
PROCESSORS, INTERCOASTAL CHEMICAL  
COMPANY, DOW CHEMICAL  
COMPANY USA, MERICHEM COMPANY,  
AND MONSANTO COMPANY,  
Defendants.

CIVIL ACTION NO.

**H-91-0830**

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency ("EPA") alleges that:

PRELIMINARY STATEMENT OF CASE

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9607 for recovery of response costs that have been and will be incurred by the United States in response to releases and threatened releases of hazardous substances from the Dixie Oil Processing Site.

90-11-2-323  
APR 2 - 1991

("Site") located near Friendswood, Harris County, Texas. Pursuant to 28 U.S.C. § 2201, the United States also seeks a declaratory judgment that the defendants shall be liable for any response costs incurred by the United States in the future with respect to the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607, and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

DEFENDANTS

4. Ralph L. Lowe is an individual who is the owner or operator of the Site.

5. Dixie Oil Processors and Intercoastal Chemical Company are entities who owned or operated the Site at the time of disposal of hazardous substances at the Site.

6. Defendants Dow Chemical Company USA, Merichem Company, and Monsanto Company are corporations which by contract, agreement or otherwise arranged for the disposal of hazardous substances at the Site or arranged for transport of hazardous substances to the Site.

CLAIM FOR RELIEF

7. The United States realleges paragraphs 1 through 5.

8. Sections 104(a)(1) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604(a)(1) and (b) provide, in pertinent part:

104(a)(1) - Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource) or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

\* \* \* \*

104(b) - Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be

occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

9. The President has delegated his powers under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), insofar as affects the Dixie Oil Processors Site, to the Administrator of the Environmental Protection Agency pursuant to Executive Order.

10. Materials located at the Dixie Oil Processors Site include "hazardous substances" and/or "pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare," within the meaning of Sections 101(14), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(14), 9604, and 9607.

11. There have been and continue to be "releases" or "substantial threats of releases" of such hazardous substances or pollutants or contaminants into the environment in and around the Dixie Oil Processors Site, within the meaning of Sections 101(22), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, and 9607.

12. The United States has undertaken, continues to undertake, and in the future will undertake removal, remedial, and other response actions at the Dixie Oil Processors Site, in response to releases or threatened releases of hazardous substances, pollutants, and contaminants within the meaning of Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607.

13. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part, as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility

or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

\* \* \* \*

14. The Dixie Oil Processors Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and as used in Section 107 of CERCLA, 42 U.S.C. § 9607.

15. As a result of the releases or threatened releases of hazardous substances from the Dixie Oil Processors Site, the United States has incurred and will continue to incur "response costs," including costs of removal or remedial action, as defined in Sections 101(25), (23), (24), 42 U.S.C. §§ 9601(25), (23), and (24), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

16. As of June 30, 1990, the costs of response actions incurred by the United States as a result of releases and threatened releases of hazardous substances from the Dixie Oil Processors Site totalled in excess of \$480,000.

17. The response and remedial actions taken by the United States at the Dixie Oil Processors Site were necessary to protect the public health, welfare or the environment and were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

18. The United States has satisfied any and all conditions precedent to a response action and to recovery of its costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

19. Each Defendant is a "person" within the meaning of Section 107 of CERCLA, 42 U.S.C. § 9607.

20. Defendant Ralph Lowe is the owner of the Dixie Oil Processors Site.

21. Defendants Dixie Oil Processors and Intercoastal Chemical Company are each persons who owned or operated the Dixie Oil Processors Site at the time of disposal of hazardous

substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

22. Each Defendant, other than those named in the immediately two preceding paragraphs, is a person who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or arranged for transport of hazardous substances to the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

23. None of the defenses set forth in Section 107(b) of CERCLA, 42 U.S.C. § 9607(b), is available to the Defendants.

24. The Defendants are jointly and severally liable to the United States for all costs of response, remedial, and removal actions incurred and to be incurred by the United States relating to the Dixie Oil Processors Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court enter judgment jointly and severally against the Defendants for:

(a) reimbursement of all costs that the United States has incurred for responding to releases or threatened releases of hazardous substances to the date of judgment, including the costs of investigation and enforcement related to such releases and this suit, with interest;

(b) a judgment declaring Defendants to be liable for all of the costs of any future actions to be taken by the United



States to respond to releases or threatened releases of hazardous substances at the Dixie Oil Processors Site;

(c) such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

RICHARD B. STEWART  
Assistant Attorney General  
Environment and Natural Resources  
Division

CARRICK BROOKE-DAVIDSON  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-2769  
FTS 368-2769

ATTORNEY IN CHARGE

RONALD G. WOODS  
United States Attorney  
Southern District of Texas

By:

ROBERT DARDEN  
Assistant United States Attorney  
United States Attorney's Office  
Civil Division  
Lyric Center Building  
440 Louisiana, Suite 800  
Houston, Texas 77002

OF COUNSEL:

D. BRUCE JONES  
Office of Regional Counsel  
United States Environmental  
Protection Agency-Region 6  
1445 Ross Avenue  
Dallas, Texas 75202